

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 31, 2017

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2015AP2609

Cir. Ct. No. 2012CV861

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

JASON L. EDMONSON,

PLAINTIFF-APPELLANT,

V.

**MICHELLE DEWITT, DARREN DEWITT, DEWITT ENTERPRISES INC.,
DEWITT INVESTMENTS LLC, JANE DOE AND LORI FLEMING,**

DEFENDANTS-RESPONDENTS,

WILSON MUTUAL INSURANCE COMPANY,

INTERVENOR.

APPEAL from an order of the circuit court for Outagamie County:
NANCY J. KRUEGER, Judge. *Affirmed and cause remanded for further
proceedings.*

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. Jason Edmonson, pro se, appeals an order denying reconsideration of a motion to reopen a summary judgment granted in favor of Michelle and Darren DeWitt, DeWitt Enterprises Inc., and DeWitt Investments LLC (collectively “the DeWitts”). We affirm. We also find the present appeal frivolous and remand for further proceedings. In addition, we warn Edmonson that further frivolous filings may result in sanctions, including the limiting of future filings.

BACKGROUND

¶2 Edmonson and Lori Fleming bought a beauty salon owned and operated by the DeWitts, with Edmonson providing collateral through a mortgage. Soon after the business deal closed, Edmonson and Fleming married, but the relationship thereafter soured. Fleming accused Edmonson of sexual assault, and a decision was made to separate Edmonson from the business. The DeWitts released Edmonson from the sale agreement and issued Edmonson a full satisfaction of the mortgage. Fleming continued to operate the salon, but the business ultimately failed.

¶3 Edmonson filed suit claiming Fleming falsely accused him of sexual assault and his agreement to the business separation occurred under duress. He alleged a variety of causes of action against Fleming and the DeWitts, including fraud, conspiracy, and damage to his character. The DeWitts moved for summary judgment and filed supporting affidavits. Edmonson responded and requested summary judgment against the DeWitts. However, instead of supporting his claims with affidavits averring facts or documentary evidence as required by WIS.

STAT. § 802.08(3) (2015-16),¹ Edmonson relied entirely upon the allegations of the complaint. The circuit court granted summary judgment in favor of the DeWitts.²

¶4 Edmonson appealed, and we affirmed the summary judgment. *See Edmonson v. DeWitt*, No. 2014AP282, unpublished slip op. (WI App July 7, 2015). We further held Edmonson’s appeal frivolous and remanded the case for the circuit court to determine the DeWitts’ reasonable attorney fees pursuant to WIS. STAT. RULE 809.25(3). *Edmonson*, unpublished slip op. ¶2.

¶5 Edmonson thereafter filed with the circuit court a motion for relief from judgment under WIS. STAT. § 806.07, raising the same arguments he raised on the summary judgment and in his initial appeal. The circuit court denied the motion. Edmonson then filed a motion for reconsideration purportedly under WIS. STAT. § 805.17(3), which was also denied on the basis that Edmonson raised the same issues rejected previously. Edmonson now appeals the denial of his motion for reconsideration.

DISCUSSION

¶6 WISCONSIN STAT. § 805.17(3) is entitled, “Trial to the court,” and applies only to actions tried to a court. *See Continental Cas. Co. v. Milwaukee*

¹ References to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

² We noted in Edmonson’s prior appeal that the circuit court also denied Edmonson’s motions for default judgment and summary judgment against Jane Doe and Fleming. However, those defendants were not named in the prior appeal, and we did not address Edmonson’s motions against Doe and Fleming. *See Edmonson v. DeWitt*, No. 2014AP282, unpublished slip op. ¶1 n.1 (WI App July 7, 2015). Similarly, we shall not address those defendants in the current appeal.

Metro Sewer. Dist., 175 Wis. 2d 527, 535-36, 499 N.W.2d 282 (Ct. App. 1993). Reconsideration under § 805.17(3) is statutorily unavailable to Edmonson in the summary judgment context because the plain language of sub. (3) allows a court to “amend its findings ... or make additional findings.” Quite simply, circuit courts do not resolve factual issues at the summary judgment stage. We therefore affirm the denial of the § 805.17(3) motion for reconsideration.

¶7 Edmonson insists he is not challenging the summary judgment ruling. However, Edmonson initially sought relief under WIS. STAT. § 806.07 from the summary judgment. He subsequently sought reconsideration under WIS. STAT. § 805.17(3) from the denial of his motion for relief from summary judgment. Construing Edmonson’s present appeal as anything but a challenge to the grant of summary judgment would be nonsensical.³

¶8 Edmonson also argues his WIS. STAT. § 806.07 claims “were never litigated in the first place.” However, we no longer have jurisdiction over Edmonson’s § 806.07 motion to reopen the summary judgment. We only have jurisdiction over the denial of the WIS. STAT. § 805.17(3) reconsideration motion, as Edmonson failed to timely appeal the denial of his § 806.07 motion. Edmonson insists he submitted “new evidence”—in particular the affidavit of Michelle DeWitt—which he characterizes as “only recently learned of facts.” However, the circuit court properly determined Edmonson’s § 806.07 submissions were originally filed by the DeWitts in opposition to Edmonson’s motion for summary

³ WISCONSIN STAT. § 805.17(3) requires a party to file a motion for reconsideration not later than twenty days after entry of judgment following a court trial. Even if we could somehow assume § 805.17(3) applied in this case, Edmonson’s motion for reconsideration was not within the twenty days provided for in § 805.17(3), but rather Edmonson’s motion for reconsideration was filed after the denial of his WIS. STAT. § 806.07 motion.

judgment. The evidence thus was before the court when it granted summary judgment to the DeWitts. Our review of the record confirms Edmonson submitted no “new evidence” in his motion to reopen the judgment, and Edmonson’s appellate briefs fail to explain why any of his purported “new evidence” would have established a genuine issue of material fact in any event.

¶9 As the circuit court correctly concluded, Edmonson’s motion for reconsideration was a “textbook example of a party ‘merely taking umbrage with the court’s [summary judgment] ruling.’” As mentioned, Edmonson filed no affidavits or other proof in opposition to summary judgment that raised a genuine issue of material fact. When a motion for summary judgment is made and supported, an adverse party may not rest upon the mere allegations or denials of the pleadings but must set forth specific facts by affidavit or otherwise showing there is a genuine issue for trial. WIS. STAT. § 802.08(3). If the adverse party does not so respond, summary judgment shall be entered against such party. *Id.* Edmonson had the opportunity to file proper counter affidavits based on personal knowledge to attempt to create a genuine issue of material fact in opposition to summary judgment—if indeed such facts existed—but he failed to present contrary evidence. Edmonson offered nothing in opposition to summary judgment but his bald-faced opinions and conclusory arguments, which Edmonson continued to raise in his motion to reopen the summary judgment.

¶10 Finally, Edmonson suggests circuit court bias. However, he fails to provide record support for this serious accusation, and our independent review of the record belies Edmonson’s assertion.

¶11 We also grant the DeWitts’ motion to find the present appeal frivolous. When the DeWitts moved for summary judgment and supported their

arguments with affidavits rebutting the allegation set forth in Edmonson's complaint, Edmonson was required to respond as required by WIS. STAT. § 802.08(3), but Edmonson instead relied on the allegations of his complaint. Having failed to provide any evidentiary support for his claims, Edmonson merely reiterated conclusory legal statements on his initial appeal. We found that appeal frivolous and specifically stated it should have been apparent to Edmonson that he had no viable arguments due to his failure to adequately respond to the summary judgment motion. *See Edmonson*, unpublished slip op. ¶6. It follows that the same arguments lack viability on the present appeal. Edmonson's purported "new evidence" was before the circuit court when it granted summary judgment and does nothing in the present appeal to ameliorate Edmonson's evidentiary deficiencies. Edmonson knew or should have known his WIS. STAT. § 805.17(3) motion for reconsideration was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law. *See* WIS. STAT. § 809.25(3)(c)1.-2. We therefore remand for the circuit court to determine the DeWitts' reasonable attorney fees incurred in the present appeal, pursuant to WIS. STAT. RULE 809.25(3). *See Lucareli v. Vilas Cty.*, 2000 WI App 157, ¶¶5-12, 238 Wis. 2d 84, 616 N.W.2d 153.

¶12 We further warn Edmonson that a court faced with a litigant who brings frivolous litigation has the authority to limit that litigant's access to the courts. We have limited future filings as a sanction, or affirmed the circuit court's decision to do so, based upon the inherent authority of the courts to efficiently and effectively provide for the fair administration of justice. *See State v. Casteel*, 2001 WI App 188, ¶23, 247 Wis. 2d 451, 634 N.W.2d 338. No one has a right to file repeated frivolous lawsuits or appeals. Further frivolous filings by Edmonson may result in sanctions including, but not limited to, restricting future access to the

courts, imposition of penalties or costs, or other actions as we consider appropriate.

By the Court.—Order affirmed and cause remanded for further proceedings.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. This opinion may not be cited except as provided under RULE 809.23(3).

